

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs September 26, 2006

**STATE OF TENNESSEE v. CORNELIUS D. PIERCE**

**Direct Appeal from the Criminal Court for Davidson County  
No. 2003-D-3045 Cheryl Blackburn, Judge**

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**No. M2005-02650-CCA-R3-CD - Filed October 30, 2006**

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The appellant, Cornelius D. Pierce, pled guilty in the Davidson County Criminal Court to selling less than one-half gram of crack cocaine, a Class C felony, and received an eight-year sentence as a Range II, multiple offender, to be served on intensive probation. Subsequently, the trial court revoked the appellant's probation and ordered that he serve his entire sentence in the Tennessee Department of Correction (TDOC). On appeal, the appellant claims that the trial court erred by ordering him to serve his sentence in confinement and that the trial court should have counted his time on probation as jail credit. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which ALAN E. GLENN and J.C. McLIN, JJ., joined.

Nathan S. Moore (on appeal) and Willow Fort (at trial), Nashville, Tennessee, for the appellant, Cornelius D. Pierce.

Paul G. Summers, Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Angelita Dalton and Rob McGuire, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

**I. Factual Background**

The record reflects that on September 10, 2004, the appellant pled guilty to selling less than one-half gram of crack cocaine and received an eight-year sentence. The trial court ordered that he serve the sentence on intensive probation and assessed a two-thousand-dollar fine. On March 10, 2005, the appellant's probation officer alleged that the appellant had violated his probation by failing to report since February 24, 2005, and the trial court issued a probation violation warrant.

At the appellant's probation revocation hearing, the appellant admitted that he had violated his probation by failing to report to his probation officer. He testified that he had been reporting to the officer as scheduled but got behind in paying his fees. The appellant's probation officer told the appellant that if he did not pay his fees at their next meeting, the officer was going to report a probation violation. For that reason, the appellant stopped reporting to his probation officer altogether. The appellant was arrested for the probation violation and spent forty-seven days in jail. He acknowledged that if the trial court were to reinstate his probation, he would pay his fees and get a full-time job working for his cousin. He also stated that he would live with his fiancé, Tammy Cooper.

On cross-examination, the appellant testified that at the time of his arrest for the probation violation, he did not have a job but was babysitting his two-year-old daughter and was mowing grass to support himself. He denied using drugs but acknowledged that he had also violated probation by being charged with the attempted sale of cocaine. He stated that he would be pleading innocent to that charge and wanted a jury trial. On redirect examination, the appellant promised that he would comply with his probation requirements. Upon questioning by the trial court, the appellant acknowledged having two prior felony convictions and serving probation for those convictions. He stated that he had violated probation for one of those convictions by being charged with a new crime. The trial court noted that the appellant had served probation for prior convictions, had violated probation in the past, was a Range II offender, and had admitted to violating his probation in this case. The trial court ordered that the appellant serve his eight-year sentence in the TDOC and that he get credit for the time he had served in jail.

## **II. Analysis**

The appellant claims that the trial court erred by ordering him to serve his sentence in confinement, that the trial court should have placed him back on probation, and that his time on probation should be counted as jail credit. The State contends that the trial court properly ordered the appellant to serve his sentence in confinement and that he was not entitled to jail credit for the time he served on probation. We agree with the State.

Regarding the appellant's claim that the trial court erred by ordering him to serve his sentence in confinement, upon finding by a preponderance of the evidence that the appellant has violated the terms of his probation, the trial court is authorized to order an appellant to serve the balance of his original sentence in confinement. See Tenn. Code Ann. §§ 40-35-310, -311(e). In this case, the appellant admitted violating his probation by failing to report to his probation officer and by being arrested for a new charge. Therefore, the trial court could order him to serve his entire sentence in confinement.

The appellant also claims that he should receive jail credit for the time he served on probation. In support of his argument, he compares the service of a probation sentence with the service of a community corrections sentence and notes that upon revocation of a community

corrections sentence, a defendant receives credit for time served on community corrections. See Tenn. Code Ann. § 40-36-106(e)(3)(B). He contends that there is “little distinction” between the two sentences and, therefore, that this court should order that he receive jail credit for the time he was on probation. However, this court and our supreme court previously have concluded that defendants cannot receive credit for time served on probation prior to a revocation. See State v. Hunter, 1 S.W.3d 643, 648 (Tenn. 1999); Young v. State, 539 S.W.2d 850, 854-55 (Tenn. Crim. App. 1976). As this court has explained, “A defendant sentenced to the community corrections program is actually serving his sentence while in the program in lieu of incarceration, see Tenn. Code Ann. § 40-36-106(e)(1) (1990), while service of the sentence is suspended for a defendant placed on probation, see Tenn. Code Ann. § 40-35-303(c) (1990).” State v. James Ray Bartlett, No. M2002-01868-CCA-R3-CD, 2004 WL 1372847, at \*2 (Tenn. Crim. App. at Nashville, June 16, 2004). Therefore, “[a] defendant is not entitled to any credits toward the sentence while on probation prior to a revocation.” Michael W. Carpenter v. State, No. M2002-02187-CCA-R3-PC, 2003 WL 21024584, at \*1 (Tenn. Crim. App. at Nashville, May 7, 2003). The case law and sentencing statutes regarding this issue are clear, and the appellant is not entitled to relief.

### **III. Conclusion**

Based upon the record and the parties’ briefs, we affirm the judgment of the trial court.

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NORMA McGEE OGLE, JUDGE